



Agricultural Marketing Service

[Doc. No. AMS-NOP-21-85]

National Organic Program; Notice of Public Listening Session with Request for Comment

AGENCY: Agricultural Marketing Service.

ACTION: Notice of public meeting.

SUMMARY: The U.S Department of Agriculture (USDA), Agricultural Marketing Service (AMS), National Organic Program (NOP), is announcing a public listening session, with request for comment, regarding upcoming standards development activities, including feedback about specific recommendations received from the National Organic Standards Board (NOSB). AMS intends to use the information received from public comments to prioritize future rulemaking and standards development activities. This Notice also includes a summary of NOP rulemaking currently in progress, for which the NOP is not accepting comments.

DATES: AMS will host a virtual meeting on March 21, 2022, from 1:00 p.m. to approximately 3:00 p.m. Eastern Time (ET). The deadline to sign up to make oral comments during the meeting is February 28, 2022. The deadline to submit written comments is March 30, 2022.

ADDRESSES: The virtual meeting can be accessed via the internet and/or phone. Access information will be available on the AMS website prior to each event. Detailed information can be found at <https://www.ams.usda.gov/event/national-organic-program-priorities-listening-session>.

FOR FURTHER INFORMATION CONTACT: Erin Healy, Director, Standards Division, National Organic Program, Telephone: (202) 617-4942; Email: erin.healy@usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Summary

This Notice seeks input from stakeholders on upcoming standards development activities by AMS NOP, including feedback about specific recommendations from the NOSB. The NOP's mission is to protect the integrity of USDA organic products and the organic seal and to develop and grow the organic market by supporting organic farms, businesses, and those exploring the organic market. NOP develops the market and protects organic integrity by establishing clear standards that create a level playing field, providing oversight of third-party certifying agents, and enforcing the regulations. The NOSB is a Federal advisory committee established by the Organic Foods Production Act (OFPA). The NOSB's mission is "to assist in the development of standards for substances to be used in organic production and to advise the Secretary on any other aspects of the implementation of [OFPA]." (7 U.S.C. 6518(a))

The USDA is committed to transparently sharing the status, priorities, decision criteria, and current positions on NOSB recommendations. As such, in response to stakeholder interest in organic standards development and in the status of outstanding NOSB recommendations, AMS is hosting a listening session with request for public comment. AMS intends to use information received from public comments to guide the prioritization of organic standards development. Stakeholders that may be affected by future actions on this topic includes certified organic operations, certifying agents, operations transitioning (or seeking to transition) to organic, consumers, and other interested parties.

The listening session will be recorded, and a transcript will be posted following the session on the NOP website at <https://www.ams.usda.gov/event/national-organic-program-priorities-listening-session>.

Oral Comments: Individuals that want to present oral comments during the virtual listening session must pre-register by 11:59 p.m. ET, February 28, 2022. Each commenter will be allotted one **3-minute** speaking slot during the virtual listening session. Instructions for registering to present oral comments can be found at <https://www.ams.usda.gov/event/national-organic-program-priorities-listening-session>.

Written Comments: Interested persons are invited to submit written comments on NOP rulemaking priorities and development activities. Written comments must be submitted on or before March 30, 2022, via <http://www.regulations.gov>. All written comments should reference the document number and the date and page number of this issue of the Federal Register. All comments submitted in response to this Notice will be included in the record and the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above. AMS, Specialty Crops Program, strongly prefers that comments be submitted electronically. However, written comments may also be submitted (i.e., postmarked) via mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section by or before the deadline.

Meeting Accommodations: If you are a person requiring a reasonable accommodation, please make requests in advance for sign language interpretation or other reasonable accommodation to the person listed under **FOR FURTHER INFORMATION CONTACT**. Determinations for a reasonable accommodation will be made on a case-by-case basis.

Background

The NOP's mission is to protect the integrity of USDA organic products and the organic seal. AMS protects organic integrity by establishing clear standards that create a level playing field and then enforcing those standards. AMS also develops and grows the organic market by supporting organic farms and businesses and those exploring the

organic market. The program also oversees third-party certifying agents in their implementation of the organic standards with organic operations and develops training to support standards implementation and oversight.

AMS also supports the work of the NOSB, an Advisory Board with a mission to assist USDA in the development of standards for substances used in organic production and to advise the Secretary on other aspects of implementation of OFPA. The NOSB has specific statutory authorities with respect to the National List, found in the OFPA and the USDA organic regulations. The Board's activities include analyzing petitions, Technical Reports, and other documents to make recommendations for certain materials to be included in or excluded from the National List. Beyond its National List responsibilities, the Board also has and exercises authority to make recommendations on other topics related to organic agriculture and food production, including new standards, clarification of existing standards, or the role of organic in broader policy issues such as climate-smart agriculture or creating a more resilient and equitable agriculture system. Some of these work agenda topics are AMS-initiated (import oversight, human capital); others are proposed by NOSB members and approved by AMS. NOP and NOSB members collaborate to develop work plan items and meeting agendas.

For all of its work, the Board develops and reviews discussion papers and proposals, and also considers stakeholder input through oral and written comment. If a NOSB proposal passes with a "decisive vote" (2/3 of the vote), it becomes a recommendation to the USDA for consideration. An NOSB recommendation is not USDA policy. USDA reviews the recommendation to determine whether to advance it through the standards development process.

The NOSB and the NOP both operate under the authority of the OFPA, and standards developed by the program must align with OFPA provisions. In addition to the OFPA, the NOSB is also governed by the Federal Advisory Committee Act (FACA). The

NOP establishes standards, including conducting rulemaking and developing policies, in accordance with the Administrative Procedure Act (APA), 5 U.S.C. 551 et seq., and the Office of Management and Budget (OMB) rules and policies. The NOSB and NOP evaluate policy using overlapping, but distinct regulatory criteria. For example, where the NOSB focuses on the OFPA criteria and stakeholder input to develop its proposals and recommendations, the NOP must also consider other factors including the regulatory impact, including costs and benefits, to regulated entities.

As of October 2021, the NOSB has made 678 recommendations to USDA AMS related to organic production and substances since the NOSB was first chartered in 1992. USDA AMS has reviewed and implemented 87 percent (592) of the Board's total recommendations and 80 percent of the NOSB's recommendations specific to practice (non-materials-related) standards. Not all recommendations have required rulemaking; AMS has implemented many NOSB recommendations through guidance, instructions and letters to certifiers, training, and policy statements.

AMS NOP Current Rulemaking Priorities

AMS has a number of rulemaking priorities in progress. This section summarizes these rules; however, AMS is not accepting comments on these rules in this listening session. Rather, they are included here to provide the status of ongoing regulatory priorities. AMS will be accepting comments on these four rules once they are published in the Federal Register.

Strengthening Organic Enforcement (SOE) Final Rule

In August 2020, AMS published the Strengthening Organic Enforcement (SOE) proposed rule to strengthen the oversight and enforcement of organic control systems. This was needed to respond to the increasing complexity of organic supply chains and market growth. The proposed rule includes provisions related to handler certifications, import certificates, and certifier oversight. The proposed rule would implement the

requirements from the 2018 Farm Bill, other provisions informed by program experience, and several recommendations from the NOSB, including:

- Calculating Percentage Organic in Multi-ingredient Products (April 2013);
- Establishing Criteria for Certification of Grower Groups (October 2002);
- Certifying Operations with Multiple Production Units, Sites and Facilities Under the National Organic Program (November 2008);
- Clarifying the Limitations of Uncertified Handlers under § 205.101(b) (October 2010);
- Strengthening Inspector Qualifications and Training (May 2018);
- Publishing Guidance on Unannounced Inspections (December 2011);
- Information on Certificates of Organic Operation (March 2005);
- Using Expiration Dates on Certificates of Organic Operation (November 2006);
- and
- Standardized Certificates (November 2007).

AMS has written the SOE final rule and it is under review. We expect the final rule to be published in 2022.

Origin of Livestock (OOL) Final Rule

In 2015, the NOP published the Origin of Livestock (OOL) proposed rule to clarify requirements for the transition of dairy animals into organic production. The OOL rulemaking is to implement previous NOSB recommendations. The final rule has been written and, as of December 2021, was under review at the Office of Management and Budget (OMB).

Organic Livestock and Poultry Standards (OLPS)

The Organic Livestock and Poultry Practices (OLPP) final rule was originally published under Secretary Vilsack in 2017 and withdrawn under Secretary Perdue in

2018. A new proposed rule – Organic Livestock and Poultry Standards (OLPS) – has been written and, as of December 2021, was under review at OMB.

Inert Ingredients in Pesticides for Organic Production

Materials and ingredients that support organic crop and livestock production and organic processors are vital for the day-to-day work of organic farms and businesses. In addition to periodic rules and notices (2-6 per year) to maintain and change the National List to respond to NOSB recommendations, AMS is finalizing an Advanced Notice of Proposed Rulemaking to address the use in organic production of “inert” substances, which is currently based on Environmental Protection Agency (EPA) regulatory reference lists that have expired. Future rulemaking is needed to update the National List to resolve the references to the expired EPA reference lists, to provide market certainty, and to maintain industry confidence in the National List process.

Overview of Program Structure

Standards development is one of many activities conducted by the NOP. The NOP is made up of six groups: Accreditation Division, Compliance and Enforcement Division, International Activities Division, Trade Systems Division, Standards Division, and the Office of the Deputy Administrator. The Accreditation Division and Compliance and Enforcement Division conducts audits of certifying agents and their satellite offices, prepares noncompliance and evaluates corrective actions; considers reinstatement requests from suspended operations; reviews certifier records and reports; investigates complaints; conducts surveillance of operations and regions or countries based on market growth and risk; conducts the program’s livestock compliance program; conducts focused import oversight investigations; and develops and delivers training for certifiers and operations.

The International Activities Division monitors existing organic trade arrangements and leads technical negotiations for new arrangements. The Trade Systems

Division is responsible for all technology development and data dashboard development for the program, including leading the development of the import certificate reporting system required by the 2018 Farm Bill. The team also leads the Interagency Organic Import Oversight Working Group. The Office of the Deputy Administrator houses the NOP appeals function, quality management, communications, Organic Integrity Learning Center development, the human capital initiative, special projects, and general customer service and organizational management.

The Standards Division develops organic rules and policies; provides technical and administrative support to the NOSB; and evaluates materials conflicts from certifiers. The Division also serves as USDA's authority on interpreting the organic standards and provides critical input to NOP and other USDA officials concerning USDA policy positions on organic production, handling, processing, and labeling.

AMS believes that the current structure of the Program appropriately supports the Program's mission. AMS invites public comments on this structure.

Outstanding NOSB Recommendations: Practice Standards

Experience has shown that organic rulemaking is most successful when it addresses the needs with the most cross-community support, when the economic benefits are clear, and when rulemaking resolves known market inconsistencies. Below, AMS outlines what it believes to be the current outstanding NOSB recommendations, focusing on practice standards. Some NOSB recommendations were passed very early in the life of the program, before there was an active NOP Standards Division. Some recommendations have been addressed through training, guidance, or instructions for certifiers. NOSB recommendations referenced above as being addressed by current rulemaking priorities are not repeated here.

Organic Apiculture Production Standards (October 2010)

NOP drafted a proposed rule that would establish organic apiculture standards during the Obama Administration; however, the rule was not published. AMS invites comments on whether to prioritize this rulemaking.

Organic Pet Food Product Standards (November 2008)

NOP drafted a proposed rule that would establish organic pet food product standards during the Obama Administration; however, the rule was not published. AMS invites comments on whether to prioritize this rulemaking.

Organic Mushroom Production Standards (October 2001)

NOP has completed preliminary research for this standards development work. Producers are currently certifying mushrooms under the organic crop standard. AMS invites comments on whether to prioritize this rulemaking.

Organic Aquaculture Production Standards (March 2007)

NOP drafted a proposed rule that would establish organic aquaculture standards during the Obama Administration. The rule was placed on hold at the end of the Administration due to interagency concerns during OMB review; agencies with interest in the rule included the National Oceanic and Atmospheric Administration (NOAA), Small Business Administration (SBA), and Office of the United States Trade Representative (USTR). The rule would require interagency coordination to advance. The NOP currently permits the sale of organic aquaculture products that are certified under other government organic standards (e.g., European Union). AMS invites comments on whether to prioritize this rulemaking.

Hydroponic/Aeroponic Production and Create Greenhouse and Container Production Standards (April 2010; November 2017 – Prohibit Aeroponics)

The certification of hydroponic production systems as organic is currently allowed by AMS if the producer can demonstrate compliance with the USDA organic regulations; there are certified organic hydroponic operations in the U.S. at this time.

While the NOSB recommended a rulemaking that would prohibit organic certification for those operations, AMS does not intend to propose the prohibition of these production systems. However, AMS agrees that there are currently inconsistencies among certifiers with respect to the certification of greenhouses and container systems. AMS invites comments as to whether standards should be established for these specific production environments.

Clarification of Emergency Synthetic Parasiticide Use with Organic Livestock (October 2018)

NOP has not made this recommendation a regulatory priority and believes it should continue to be a low regulatory priority, as there has not yet been a demonstrated need or justification for advancing this recommendation. There are no known situations where parasiticides have been used in a manner inconsistent with the National List, nor have certifiers reported having issues determining what is considered “emergency use.” AMS invites comments on this prioritization.

Eliminate Incentive to Convert Native Ecosystems to Organic Production (April 2018)

NOP has not made this recommendation a regulatory priority. Provisions within this recommendation appear to contradict the wild crop standard which allows product harvested from unmanaged land to be certified as organic. Before proceeding with this recommendation, NOP would like to see significant support by the organic industry and Congressional action may be needed. AMS invites comments on this prioritization, including whether increased utilization of existing USDA programs could help meet some of the goals of this recommendation.

Establish Standard Criteria for Commercial Availability Determinations – Agricultural Ingredients in Processed Products Standards (November 2007)

NOP has not made this recommendation a regulatory priority because the Accredited Certifiers Association (ACA) has issued Best Practices documents for

commercial availability that are currently in use among the industry. Certifiers have not communicated a strong need for this recommendation to move forward. AMS invites comments on this prioritization.

Require Increased Use of Organic Seeds (April 2019)

NOP has not made this recommendation a regulatory priority because NOP believes the recommendation is already addressed by USDA organic regulations for commercial availability related to seeds and planting stock. Therefore, additional rulemaking is not needed. The NOP has completed training on organic seed sourcing as a practical, high-impact step; the training is available in the Organic Integrity Learning Center. The ACA has also published a Best Practice Document for certifiers to increase consistency. AMS invites comments on this prioritization.

Recommendations Related to Genetic Engineering and Excluded Methods (Multiple)

NOSB has made a number of recommendations related to genetic engineering and included methods. For example, “*Require Genetic Integrity for Transparency of Seed Grown on Organic Land - Instructions to Certifiers*” (October 2019) and “*Guidance of GMO Prevention Strategies*” (October 2015) both recommend establishing thresholds for addressing the presence of genetic material contamination, with significant cost implications for testing and monitoring. The NOP has not prioritized these two recommendations given the significant implementation requirements and likely costs involved. AMS invites comments on this prioritization.

The NOSB has also recommended developing “*Guidance for Determining which New Technologies are Considered Excluded Methods*” (October 2019). NOP has not made this recommendation a priority because it believes the current definition of Excluded Methods in the USDA organic regulations is sufficiently broad to cover a large range of new technologies. Augmenting this regulatory definition with a long list of prohibited technologies may cause confusion and could lead to an implied “allowance by

omission” for technologies not listed. We believe the intent of this recommendation could be achieved by communicating the program’s position on excluded methods (that they are not allowed) more directly and investing resources into communicating with certifiers about NOP’s expectations for oversight. AMS invites comments on this prioritization.

Develop Organic Personal Care Product Standards (December 2009)

NOP has not made this recommendation a regulatory priority. This rulemaking would be very complex and would require a significant expansion of existing regulations. NOP has published two items: “Policy Memo: “Organic Personal Care/Cosmetics” and “Fact Sheet – Personal Care Products” that have allowed certifiers and operations to find a path to certification for these products within the existing rules and standards. Other private standards have been developed that are specific to organic cosmetic certification. Regulatory action in this area would require significant interagency cooperation and review, as it would need to harmonize with current Food and Drug Administration (FDA) regulations regarding ingredient statements on cosmetics and personal care products. AMS invites comments on this prioritization.

Restrict the Use of Livestock Vaccines Made from Excluded Methods (October 2019)

NOP has not made this recommendation a regulatory priority. There has not been a strong justification or demonstrated need for this rulemaking. The organic livestock industry is not large enough to support the development, testing, and deployment of non-genetically modified (GMO) vaccines. Rulemaking would involve adding the non-GMO commercial availability as an annotation to § 205.603(a)(4). AMS invites comments on this prioritization.

NOP Handbook Updates

Along with the OFPA and the USDA organic regulations, the NOP Handbook, titled, *The Program Handbook: Guidance and Instructions for Accredited Certifying Agents and Certified Operations* provides those who own, manage, or certify organic

operations with guidance, instructions, and policy memos that can assist them in complying with the USDA organic regulations. The Handbook is consistent with OMB's Bulletin on Agency Good Guidance Practices (GGPs) published January 25, 2007 (72 FR 3432-3440). The purpose of the OMB's GGPs is to help ensure that program guidance documents are developed with adequate public participation, are readily available to the public, and are not applied as binding requirements.

The NOP Handbook is an important tool for organic operations and for certifying agents. There are a number of guidance, instructions, and policy memos that are part of the NOP Handbook that will need to be updated as a result of SOE; several also need updates to align with current NOP policy (e.g., label use-ups when certifiers exit the organic program; accreditation process updates based on NOP's increased staffing and capabilities; and references to conservation tools administered by other USDA agencies). AMS invites public comments with respect to which NOP Handbook documents need updates from the organic community's perspective.

Request for Public Comments

AMS seeks comments on the prioritization of outstanding NOSB recommendations and NOP Handbook updates (specifically, comments on whether issues not currently included should be considered for regulatory action) as it considers future rulemaking and policy development activities. AMS welcomes input about whether current resources should be allocated in a different manner to support standards development, or other program priorities. Comments received in response to this notice will inform future regulatory and policy development activities.

Erin Morris,

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